

REMARKS

This amendment is being filed in response to the non-final Office Action mailed on January 3, 2007. In that Office Action, claim 11-15 were rejected as being directed to non-statutory subject matter and claims 1-20 were rejected on prior art grounds. Claims 1, 4-6, 11-16, and 18 are being amended. No new matter has been added or claimed, and each of the new claims is properly supported by the disclosure of the application as originally filed. Accordingly, claims 1-20 remain pending in the application.

Rejections under §101

Pending claims 11-15 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 11-15 have been amended to incorporate the changes suggested by the Examiner in the Office Action. Specifically, independent claim 11 has been amended to claim a “computer *readable* medium including a *stored* computer program code.” Applicant respectfully requests that Examiner withdraw the rejection in lieu of the amendments by the Applicant.

Rejections under §102(e)

Pending claims 1-20 stand rejected under 35 U.S.C. §102(e) as being anticipated by Messina et al. (US 2002/0065037). Applicant respectfully traverses the rejections for the reasons discussed below.

Messina is directed to a system and method for a providing two-way communication via an audio system in a vehicle.¹ The method and system provide a back channel infrastructure that supports two-way communication from a telematics device in the vehicle.² Messina discloses three methods for using the two-way communication. The first method sends an item via radio waves to the audio system. A listener can indicate approval or disapproval of the item by pressing a button on the telematics device.³

¹ Messina et al., U.S. Publ. No. 2002/0065037, par. 0021, Ins. 1-2.

² *id.*

³ *id.* at par. 0009.

The second method unlocks the doors on a vehicle when a vehicle owner calls an SDAR infrastructure to request that the infrastructure unlock the doors.⁴ In response to the request, the infrastructure sends a radio signal with a unique alphanumeric identification name that is received by a radio receiver on the vehicle. The vehicle unlocks the doors upon receipt of the radio signal by the receiver.

The third method begins when a customer sends a request for location information via the back channel.⁵ The infrastructure receives the request and GPS information from the vehicle and sends a location-specific answer to the vehicle via radio signal. Based on the answer, the customer can send another request to the infrastructure for a different answer.

Independent Claim 1

In contrast to the Messina application, the subject matter of Applicant's claim is directed to an entirely different method used for a different purpose. The Messina application is addressing a system and methods for a customer to interact and respond to content broadcast over a radio signal. Applicant's invention, on the other hand, is directed to a method for delivering a command to one or more vehicles to execute a vehicle data upload function. More specifically, amended claim 1 is directed to a method of initiating a vehicle data upload function at a plurality of mobile vehicles, including the step of "*performing a vehicle data upload function based on the extracted vehicle data upload command signal.*" This step is neither disclosed nor suggested in the prior art of record.

In particular, the Messina application does not disclose *performing a vehicle data upload function based on the extracted vehicle data upload command signal*. Although Messina shows transmitting encoded data over a satellite-air interface to a telematics device, Messina does not teach performing a vehicle data upload function based on an extracted command signal. Rather, Messina's teachings are limited to sending a

⁴ *id.* at par. 0010.

⁵ *id.* at par. 0032.

customer's purchase request, unlocking vehicle doors, or requesting navigation services based on a customer request.

Furthermore, it would not be obvious to modify the methods in Messina to include the performing step as recited in claim 1. Specifically, the first method in Messina involves a customer response (e.g., the customer pressing a buy button). It would not be obvious to automate that response because automating the response would remove the user decision making ("I want to buy it") which is fundamental to the method taught in Messina. Likewise, the second and third methods disclosed in Messina involve communication initiated by the user to a call center (e.g., the vehicle owner calling to request the doors be unlocked, and the customer sends a request for location information). The second and third methods in Messina teach that a response is provided to the vehicle from the call center in response to the customer requests and not the other way around. Therefore, not only do the Messina processes operate in a different manner than the claimed, but also given the different purpose of Messina's system compared to Applicant's, this subject matter of claim 1 is not obvious in view of Messina, whether considered singly or in combination with other prior art of record.

Claims 2-10 ultimately depend from claim 1. In view of the reasons articulated above, the Applicant respectfully submits that claims 1-10 are patentable over Messina.

Dependent Claim 5

Dependent claim 5 is also patentably distinguishable over Messina because Messina does not disclose "*initiating a vehicle data upload call from a telematics unit in the plurality of mobile vehicles to a call center in response to the vehicle data upload command signal.*" The Examiner cited paragraphs 0024 and 0031 of Messina as disclosing these limitations. Paragraph 0024 describes an output signal generated by a down link processor for sending data to a telematics device. But paragraph 0024 neither teaches the signal containing a vehicle data upload command signal nor initiating a vehicle data upload call.

Paragraph 0031 does not overcome the deficiencies of paragraph 0024. While paragraph 0031 does teach a customer calling the SDAR infrastructure to request a door unlock function, the call is not *in response to a vehicle data upload command signal*, but rather, is customer initiated. Moreover, the call is not made from the telematics device, but is made from outside the vehicle to request that the customer's vehicle doors unlock. Therefore, claim 5 patentably defines over the Messina application because Messina does not involve initiating a vehicle data upload call from a telematics unit in the plurality of mobile vehicles to a call center in response to the vehicle data upload command signal.

Dependent Claim 6

Dependent claim 6 is also patentably distinguishable over Messina because Messina does not disclose *"initiating a vehicle data storage of data collected by the vehicle* in at least one of the plurality of mobile vehicles in response to the vehicle data upload command signal." Claim 6 has been amended to clarify that the data stored on the vehicle is data collected by the vehicle and not data received from the vehicle data upload command signal. The Examiner cited paragraph 0027 of Messina as disclosing initiating a vehicle data storage. Rather than disclosing initiating a vehicle data storage of data collected by the vehicle, paragraph 0027 merely teaches that the output signal from the satellite service is delivered to a data cache in the telematics device. Moreover, the caching of the output signal enables the telematics device to receive the output signal in a streaming mode and is not cached in response to a command. Therefore, claim 6 is patentably distinguishable over Messina because Messina does not disclose *initiating a vehicle data storage of data collected by the vehicle*.

Independent Claims 11 and 16

Similar to claim 1, amended independent claim 11 calls for *computer program code for performing a vehicle data upload function based on the extracted vehicle data upload command signal*. Likewise, similar to claim 1, amended independent claim 16 calls for *means for performing a vehicle data upload function based on the extracted vehicle data upload command signal*. Therefore, for reasons similar to those discussed above in conjunction with claim 1, these steps are neither disclosed nor suggested by the

prior art of record. Claims 12-15 each ultimately depend from claim 11, and claims 17-20 each ultimately depend from claim 16. In view of amended claims 11 and 16, and at least for the reasons articulated above, the Applicant respectfully submits that claims 11-20 are patentable over the prior art.

Dependent Claims 13 and 18

Similar to claim 5, amended dependent claim 13 calls for *computer program code for initiating a vehicle data upload call from a telematics unit in the plurality of mobile vehicles to a call center in response to the vehicle data upload command signal*. Likewise, similar to claim 5, amended dependent claim 18 calls for *means for initiating a vehicle data upload call from a telematics unit in the plurality of mobile vehicles to a call center in response to the vehicle data upload command signal*. Therefore, for reasons similar to those discussed above in conjunction with claim 5, these steps are neither disclosed nor suggested by the prior art of record. Applicant respectfully requests that the Examiner allow claims 13 and 18.

Dependent Claims 14 and 19

Similar to claim 6, amended dependent claim 14 calls for *computer program code for initiating a vehicle data storage in the plurality of mobile vehicles in response to the vehicle data upload command signal*. Likewise, similar to claim 6, dependent claim 19 calls for *means for initiating a vehicle data storage in the plurality of mobile vehicles in response to the vehicle data upload command signal*. Therefore, for reasons similar to those discussed above in conjunction with claim 6, these steps are neither disclosed nor suggested by the prior art of record. Applicant respectfully requests that the Examiner allow claims 14 and 19.

Conclusion

In view of the foregoing, Applicants submit that all claims are allowable. Reconsideration is therefore requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge Deposit Account No. 07-0960 for any required fees or to credit that same deposit account with any overpayment associated with this communication.

Respectfully submitted,

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